The Law of The Sea Conference
A Critical Point for Man and the Oceans

DEC 1973

by Miriam L. Levering, Secretary
OCEAN EDUCATION PROJECT

WHAT IS AT STAKE IN THE COMING LAW OF THE SEA CONFERENCE?

Who shall own the oceans? Shall the trillions of dollars worth of ocean oil, hard minerals, and fish largely go to the rich and technically capable or be shared equitably with developing countries?

Will reasonable freedom of ocean use for ships and planes, scientific research and enjoyment continue, or be restricted by national whims?

Will fish and other living creatures be wiped out by huge factory ships? Will the ocean environment continue to be degraded by oil, chemicals, and wastes?

Will the oceans be fought over, as land areas have been in past centuries, or will the Law of the Sea Conference create clear law and effective institutions for peaceful, rational, and just management of two thirds of the world's surface?

FIRST, A FEW FACTS

Up to fifty years ago, ocean uses were largely shipping and fishing. There was plenty of room for ships, and only ocean mammals and fish spawning in fresh water streams, such as salmon, were seriously threatened. Pollution of the vast oceans seemed minor. Therefore, Grotius' law of the sea, which allowed nations a territorial sea of three miles from shore, with freedom of the high seas beyond, was generally acceptable.

Industrialization, heaped up knowledge of ocean resources, and modern technology to exploit them have brought new and enlarged ocean uses. 18% of the world's petroleum now comes from the seabed, and its estimated 2200 billion barrels are the largest future oil potential.

The estimated 18 billion dollar annual fish catch constitutes an important part of the world's scarce protein, but some fish stocks already have been wiped out by overfishing, and others are threatened. The estimated one and a half trillion tons of manganese nodules contain nickel, copper, and cobalt, soon available, and vital as land based ores are used up. Vast wealth, but who owns it?

Organic chemicals, heavy metals, oil, and wastes already making some semi-enclosed seas such as the Baltic uninhabitable for some living creatures, are also making it rough for ocean life far from pollution sources.

All these changes have brought expanded national claims to ocean wealth, as well as stirring up other urgent problems for mankind. Grotius' law of the sea is now neither adequate nor acceptable.

Since 1967, when Ambassador Arvid Pardo of Malta alerted the United Nations, the Seabed Committee has been preparing for the third UN Law of the Sea Conference with substantive sessions scheduled for Caracas, Venezuela June-August, 1974. In part, this Conference is made necessary by the failure of the previous two in 1958 and 1960 to settle how far from shore, both of water and seabed, the coastal nation owns and controls.

ISSUES TALKED ABOUT

1. The width of the territorial sea, in the past, 3 miles, could be changed to twelve if free transit is guaranteed in the many international straits wider than 6 miles. Otherwise, for example, Spain and Morocco could deny passage through the straits of Gibraltar.

2. An economic zone, under coastal state management beyond the territorial sea. A zone from 12 to 200 miles may be agreed on, if international community rights such as freedom of navigation, pollution standards, etc. are recognized within this zone.

3. An international area, beyond the economic zone, managed by an International Ocean (or Seabed) Authority is possible if agreement can be reached on its powers and how it is to be controlled.

4. Standards and agreements on preventing ocean pollution. The nations may assume some obligations concerning land based pollution, while the International Maritime Consultative Organization continues to regulate ship based pollution.

THE DEEPER ISSUES

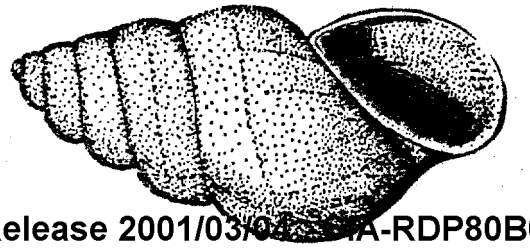
The real issues lie deeper, although partly expressed through those above.

First, given the diverse and conflicting positions, will there be any agreement? The alternative is conflict and anarchy at sea.

Second, what will happen to "the common heritage"? In 1970, the United Nations unanimously adopted a declaration that seabed resources beyond national jurisdiction are the common heritage of mankind, to be governed by an International Authority, with revenues to be used for international community purposes, and particularly for developing nations. A central issue is whether this is one more pious phrase, or whether the UN Law of the Sea Conference will really implement this.

Will the "common heritage" of vast mineral wealth, abundant living resources, purity of ocean water, freedom for scientific research, technological mastery, and the joy and beauty of the sea be preserved and carefully used for the benefit of all mankind?

Or will it be "ripped off" by the geographically fortunate coastal nations and those technically capable, thus widening the tragic gap between rich and poor nations? Will this exploitation be accompanied by interference with ocean commerce and scientific research, a wipeout of fish, and unchecked pollution?



Third, Will This Great but Fleeting Opportunity Be Grasped? The oceans enfold a vast amount of wealth, not yet owned by nations. Will this opportunity for equitable sharing of revenue, especially for developing countries, be implemented?

The protection of ocean environment can be advanced by actions of the Law of the Sea Conference. Will this slip away?

When has there been such an opportunity to strengthen world community by agreements felt to be just by developing countries, in which they have a share in the control and operation of ocean enterprises, and majority decision in spending the money? Will the nations at Caracas "blow" this?
The oceans represent the one area in which major progress toward effective international organization and the world rule of just law is now possible. An International Ocean (or Seabed) Authority, with its own dependable revenue (from leases and royalties), peaceful enforcement, and acceptable control (neither veto nor one-nation one vote) could gain experience and establish precedents for other problems that plague planet Earth. Disarmament, food, scarce resources, environment,--all cry out for global management. Will this opportunity be grasped to move toward world order?

With every passing day, coastal states and modern technology are creeping out and ripping off the wealth of the sea. Fish are not increasing, and pollution is not going away. Effective controls cannot lag. For some goals, it is soon or never.

UNITED STATES OCEAN POLICY

The United States is the leading maritime nation, with capital and advanced ocean technology, and most varied and far flung ocean interests. As in other countries, there is an internal struggle between narrow, immediate economic gain and broader long term self interest and responsibilities as a good neighbor in the world community.

In our judgment, U.S. Law of the Sea proposals, 1970 to date, belong with those which are generally wise and far sighted. They recognize that the real interests of the U. S. in use of the oceans for commerce and navigation, peace and world order, justice, availability of needed resources, and protection of ocean life are the same as those of mankind. These proposals have wide support from the President and most Executive Departments, by resolutions adopted by both Houses of Congress, and by a wide private spectrum of industry and environmental and other public interest organizations.

But some forces within the administration have decided that from an economic viewpoint the U. S. should claim all seabed resources out to the continental margin. This conflicts with present U. S. proposals for substantial revenue sharing, particularly for developing countries, beyond 200 meters depth.

They have also decided that from an economic standpoint, there is no need for an International Seabed Resources Authority, and that American industry should be free to exploit deep seabed resources, with little regulation. This conflicts with U.N. action calling for governance of this area by an International Authority, and with consistent U. S. support of such a body.

Some U. S. companies and their friends in Congress urge immediate mining of the manganese nodules lying on the deep ocean floor without waiting for a UN agreement. This would conflict with present U. S. policy, threaten the Law of the Sea, and take resources most nations don't consider ours. It could damage copper and nickel producers such as Zambia, Zaire, Canada as well.

If U. S. policy were reversed to reflect these views, in our judgment, the concept of the common heritage would be largely destroyed, and the real interests of the U. S., and of mankind generally, would suffer irretrievably. The coming Law of the Sea Conference might well be a fiasco.

POLICIES OF OTHER NATIONS

Policies of some other nations reflect what appears to be a misguided judgment of their national interests. This is particularly true of coastal nations, both developing and developed. An exclusive economic zone out to 200 miles is popular even though most coastal nations would fare better under a system based on substantial revenue sharing.

A 200 mile exclusive economic zone, even around small islands and with long, inclusive baselines, accompanied by large ocean areas made territorial seas by "the archipelago principle", would give coastal nations over seventy percent of ocean territory and almost all of its vast wealth. The biggest gainers would be developed nations with long coastlines and colonial or island possessions. The United States, the Soviet Union, the United Kingdom, Canada, Australia, France, Portugal, Japan and Denmark would end up with over half of the oceans' resources. Other gainers would be Indonesia, Brazil, Mexico, Argentina, and the Philippines. The 100 plus remaining nations, except a few, chiefly those with rich offshore oil deposits, would be losers.

Such an "ocean colonial period" would widen the gap between rich and poor peoples. It might well endanger the free use of the oceans by ship and plane, and for enjoyment and scientific research. It would give inadequate protection to ocean life and environment.

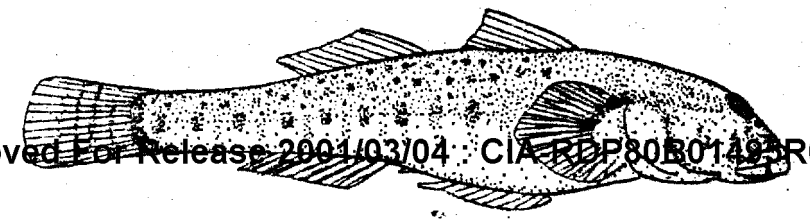
GOALS FOR THE LAW OF THE SEA CONFERENCE

A. Agreement by the end of 1975 on a new, just law of the sea. The alternative is dangerous, destructive, and "devil take the hindmost" ocean anarchy.

B. The agreement must not only be fair to developing nations, but must be viewed by them as fair and just. Equity requires that they receive more than an equal share from ocean resources, since developed nations have received more than an equal share from land based resources.

1. There should be a contribution of a substantial share of lease and royalty revenues from the coastal zones off developed countries for international community purposes, and especially for developing nations.
2. It is important to manage the resources development of the deep oceans so that substantial revenues shall go to developing countries, and so that needed resources are available.

C. The agreement should establish a strong ocean authority. One good example is worth a thousand arguments for world order.



D. The agreement must not neglect the protection of the ocean environment. It should (1) establish control by the International Ocean Authority over pollution from exploitation of resources in the deep oceans. (2) Set agreed standards for control of land based sources of marine pollution (3) Provide that some money from the fund for international community purposes be used for marine environmental research. It could also be used to help developing nations industrialize with minimum damage to the environment. (4) Require environmental impact statements to be submitted by nations or others proposing actions which would alter the marine environment. (5) Provide means to enforce the international conventions prohibiting dumping in the oceans of toxic or other harmful materials.

E. The agreement should preserve the freedom of the seas for navigation, scientific research, and enjoyment.

F. The agreement should provide for effective conservation of fish and other marine life..

G. The agreement should protect international community rights, in any economic zone managed by coastal nations, to protect other ocean uses; protect the ocean environment; share revenue with the international community; provide compulsory settlement of disputes; and bring impartial third party judgment to bear in cases involving investors and coastal nations.

WHAT ARE THE PROSPECTS?

A just and effective ocean treaty can emerge from the Law of the Sea Conference meeting in Caracas in 1974, and pro bably in Vienna in 1975

But unless the U. S. delegation provides positive leadership toward an agreement that is seen by developing nations to be fair and equitable, this is unlikely.

Unless some major developed nations with rich coastal zones take similar positions, agreement also is unlikely.

Finally, unless a number of developing nations also rise above what they now appear to consider to be their national interests, a just and effective ocean treaty probably will not happen.

THERE IS WORK TO DO

United States citizens need to thank their government for its enlightened policy so far, and see that its many strong points are not reversed. They also should urge flexibility, particularly on the organization and powers of the International Seabed Authority, to meet legitimate objections by developing nations.

Citizens of coastal nations need to decide what their national interests really are, and to urge their governments to further their broad, long term interests.

Citizens of all countries need to impress upon their governments the importance of grasping this opportunity to protect and use the oceans as "the common heritage of mankind". A few people make ocean policy. A few people can make a difference. If this happens in enough countries, the Conference can take "a giant step" for man.

FOR FURTHER READING

The United Nations and the Oceans, Louis B. Sohn; Commission to Study the Organization of Peace, 866 UN Plaza, New York 10017 $1.50 June, 1973

Mangone, Gerard J. The United Nations, International Law, and the Bed of the Seas; Washington, D. C.: Woodrow Wilson International Center for Scholars, Ocean Series 303, January, 1972 $1.00

To Help Determine Your Nation's Offshore Minerals

Lewis, A. Barton, A Quantitative Comparison of Economic Zone Proposals, Ocean Education Project, 245 2nd St. N.E., Washington, D. C. 20002 50 cents

Summary Petroleum and Selected Mineral Statistics For 120 Countries, Including Offshore Areas Geological Survey Professional Paper 817 U. S. Department of the Interior U. S. Government Printing Office

Economic Significance, In Terms of Sea Bed Mineral Resources, Of the Various Limits Proposed for National Jurisdiction Report of the UN Secretary General A/AC.138/87

Kanenas: Wide Limits and "Equitable" Distribution of Seabed Resources, Ocean Development and International Law Journal, 1973 Vol 1 Number 2, Crane, Russak & Company, Inc.

Brief Material Available from Ocean Education Project

Gerstle, Margaret L. Background on Existing Law of the Sea and Seabed 25¢

Shapley, Deborah, Ocean Technology: Race to Seabed Wealth Disturbs More Than Fish, reprint from Science Magazine 25 May 1973 10¢

Anderson, Alan, Chaos at Sea reprint from Saturday Review World 11/6/73 10¢ includes interview with Arvid Pardo

U. S. Committee for the Oceans, The Manganese Nodule: What Is It? Why the Flap? 10¢

Schwebel, Stephen M, Who Shall Control the Seas andFor What Purposes? Reprint from the Washington Post, November 8, 1972 10¢

Fischer, William F., Jr and Allen C. Whose Oceans? 10¢

Pardo, Arvid Address to the American Oceanic Organization; Reprinted by Senator Lee Metcalf in the Congressional Record, November 9, 1973 entitled, The Man Who Started It All

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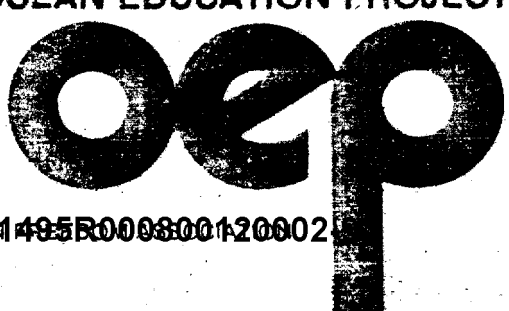

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Appendix D

List of Subjects and Issues Relating to the Law of the Sea *

Approved by the U.N. Seabed Committee On August 18, 1972

1. International regime for the sea-bed and the ocean floor beyond national jurisdiction
   - 1.1 Nature and characteristics
   - 1.2 International machinery: structure, functions, powers
   - 1.3 Economic implications
   - 1.4 Equitable sharing of benefits bearing in mind the special interests and needs of the developing countries, whether coastal or landlocked
   - 1.5 Definition and limits of the area †
   - 1.6 Use exclusively for peaceful purposes
2. Territorial sea
   - 2.1 Nature and characteristics, including the question of the unity or plurality of regimes in the territorial sea
   - 2.2 Historic waters
   - 2.3 Limits
   - 2.3.1 Question of the delimitation of the territorial sea; various aspects involved
   - 2.3.2 Breadth of the territorial sea, Global or regional criteria. Open seas and oceans, semi-closed seas and enclosed seas
   - 2.4 Innocent passage in the territorial sea
   - 2.5 Freedom of navigation and overflight resulting from the question of plurality of regimes in the territorial sea
3. Contiguous zone
   - 3.1 Nature and characteristics
   - 3.2 Limits
   - 3.3 Rights of coastal States with regard to national security, customs and fiscal control, sanitation and immigration regulations
4. Straits used for international navigation
   - 4.1 Innocent passage
   - 4.2 Other related matters including the question of the right of transit
5. Continental shelf
   - 5.1 Nature and scope of the sovereign rights of coastal States over the continental shelf. Duties of States
   - 5.2 Outer limit of the continental shelf: applicable criteria
   - 5.3 Question of the delimitation between States; various aspects involved
   - 5.4 Natural resources of the continental shelf
   - 5.5 Regime for waters superjacent to the continental shelf
   - 5.6 Scientific research
6. Exclusive economic zone beyond the territorial sea
   - 6.1 Nature and characteristics, including rights and jurisdiction of coastal States in relation to resources, pollution control and scientific research in the zone. Duties of States
   - 6.2 Resources of the zone
   - 6.3 Freedom of navigation and overflight

* U.N. Doc. Supp. No. 21 (A/8721, pp. 4-8).

† To be considered in the light of the procedural agreement as set out in paragraph 22 of the report of the Committee (Official records of the General Assembly, Twenty-Sixth Session, Supplement No. 21 [A/8421]).

- 6.4 Regional arrangements
- 6.5 Limits: applicable criteria
- 6.6 Fisheries
- 6.6.1 Exclusive fishery zone
- 6.6.2 Preferential rights of coastal States
- 6.6.3 Management and conservation
- 6.6.4 Protection of coastal States' fisheries in enclosed and semi-enclosed seas
- 6.6.5 Regime of islands under foreign domination and control in relation to zones of exclusive fishing jurisdiction
- 6.7 Sea-bed within national jurisdiction
- 6.7.1 Nature and characteristics
- 6.7.2 Delineation between adjacent and opposite States
- 6.7.3 Sovereign rights over natural resources
- 6.7.4 Limits: applicable criteria
- 6.8 Prevention and control of pollution and other hazards to the marine environment
- 6.8.1 Rights and responsibilities of coastal States
- 6.9 Scientific research

7. Coastal State preferential rights or other non-exclusive jurisdiction over resources beyond the territorial sea
   - 7.1 Nature, scope and characteristics
   - 7.2 Sea-bed resources
   - 7.3 Fisheries
   - 7.4 Prevention and control of pollution and other hazards to the marine environment
   - 7.5 International co-operation in the study and rational exploitation of marine resources
   - 7.6 Settlement of disputes
   - 7.7 Other rights and obligations
8. High seas
   - 8.1 Nature and characteristics
   - 8.2 Rights and duties of States
   - 8.3 Question of the freedoms of the high seas and their regulation
   - 8.4 Management and conservation of living resources
   - 8.5 Slavery, piracy, drugs
   - 8.6 Hot pursuit
9. Land-locked countries
   - 9.1 General Principles of the Law of the Sea concerning the land-locked countries
   - 9.2 Rights and interests of land-locked countries
   - 9.2.1 Free access to and from the sea: freedom of transit, means and facilities for transport and communications
   - 9.2.2 Equality of treatment in the ports of transit States
   - 9.2.3 Free access to the international sea-bed area beyond national jurisdiction
   - 9.2.4 Participation in the international regime, including the machinery and the equitable sharing in the benefits of the area
   - 9.3 Particular interests and needs of developing land-locked countries in the international regime
   - 9.4 Rights and interests of land-locked countries in regard to living resources of the sea
10. Rights and interests of shelf-locked States and States with narrow shelves or short coastlines
    - 10.1 International regime
    - 10.2 Fisheries
    - 10.3 Special interests and needs of developing shelf-locked States and States with narrow shelves or short coastlines
    - 10.4 Free access to and from the high seas
11. Rights and interests of States with broad shelves

12. Preservation of the marine environment
    - 12.1 Sources of pollution and other hazards and measures to combat them
    - 12.2 Measures to preserve the ecological balance of the marine environment
    - 12.3 Responsibility and liability for damage to the marine environment and to the coastal State
    - 12.4 Rights and duties of coastal States
    - 12.5 International cooperation
13. Scientific research
    - 13.1 Nature, characteristics and objectives of scientific research of the oceans
    - 13.2 Access to scientific information
    - 13.3 International cooperation
14. Development and transfer of technology
    - 14.1 Development of technological capabilities of developing countries
    - 14.1.1 Sharing of knowledge and technology between developed and developing countries
    - 14.1.2 Training of personnel from developing countries
    - 14.1.3 Transfer of technology to developing countries
15. Regional arrangements
16. Archipelagos
17. Enclosed and semi-enclosed seas
18. Artificial islands and installations
19. Regime of islands:
    - (a) Islands under colonial dependence or foreign domination or control;
    - (b) Other related matters
20. Responsibility and liability for damage resulting from the use of the marine environment
21. Settlement of disputes
22. Peaceful uses of the ocean space; zones of peace and security
23. Archaeological and historical treasures on the sea-bed and ocean floor beyond the limits of national jurisdiction
24. Transmission from the high seas
25. Enhancing the universal participation of States in multilateral conventions relating to the law of the sea.

SATURDAY REVIEW (World), 6 November 1973, pp. 16 and 19-21.

The Rape of the Seabed

Advanced nations would like to play "winner take all," but poorer countries are also demanding a share of the vast underwater oil and mineral cache.

By Alan Anderson

The benign neglect of the sea floor is coming to an end. Man has discovered riches in the continental shelves and abyssal plains, and he aims to get at them. Until recently the 150 million square miles that lie beneath the seas had not yet received much attention from man, aside from a rather persistent habit of "deep-sixing" a fabulous variety of human and industrial garbage, tangled cables, wasted ships, and roughly a million tons of unexploded ordnance. Now at least part of the picture is changing rapidly.

Since World War II the boom in oceanography and a virtual revolution in geological thinking have resulted in a picture of the world's oceans unimagined even by professionals in the field. They are beginning to see not only that hard minerals and petroleum abound under the sea but also how they got there. Knowing this, it is for the first time possible to search for undersea riches in something more than a random fashion.

There is, of course, a problem: Given the ability to find these mineral riches, and even to retrieve them, who is the rightful owner? The technologically advanced nations would like to play winner take all and, indeed, are uniquely capable of exploiting seabed caches. On the other hand, poorer nations are also demanding a slice of the underwater pie, promoting the notion that such wealth is part of "the common heritage of mankind." They warn against attempts by the sea powers at any sort of undersea ripoff, speaking ominously of countermoves such as the restriction of fishing and navigation rights. The United States in particular has stirred up considerable resentment because of the aggressive attitude—and action—taken by American mining companies. In fact, a ship built to secret specifications by Howard Hughes set sail in August to begin experimental mining, presumably in the Pacific Ocean, far in advance of any sort of international agreement.

While other companies wait for legislation that would protect them against intervention by other companies or other countries, they are no less eager to begin the harvest. It is not hard to understand their impatience: High-grade mineral resources are becoming scarce in this country, as are petroleum reserves. "The United States," insists Ian MacGregor, chairman of American Metal Climax, Inc., "is turning into a minerals-poor nation." Demand for hard minerals doubled over the last twenty years, and predictions say it will double again in twenty-five years. Yet in 1970 this country had to pay $8.6 billion to foreign countries for minerals and petroleum it could not produce domestically. Hence the mining industry is arguing strenuously that free access to seabed resources would not only assure a supply of strategically important metals now controlled by foreign governments but would also correct a painful balance of payments disadvantage.

In an effort to mitigate this new kind of ugly Americana, the official policy of the country, as presented to the preliminary Law of the Sea Conference in Geneva in August, is to create an international regime to control mining through the United Nations. Such a regime, according to the plan, would tax mining operations according to complex formulas. Revenues could bring the United Nations some $6 billion a year that could be applied to keeping the peace, protecting the environment, and aiding poor countries. Best of all, the United Nations would no longer have to depend on voluntary contributions subject to the whimsey of changing governments. The prematurely aging institution would gain sorely needed power and stature.

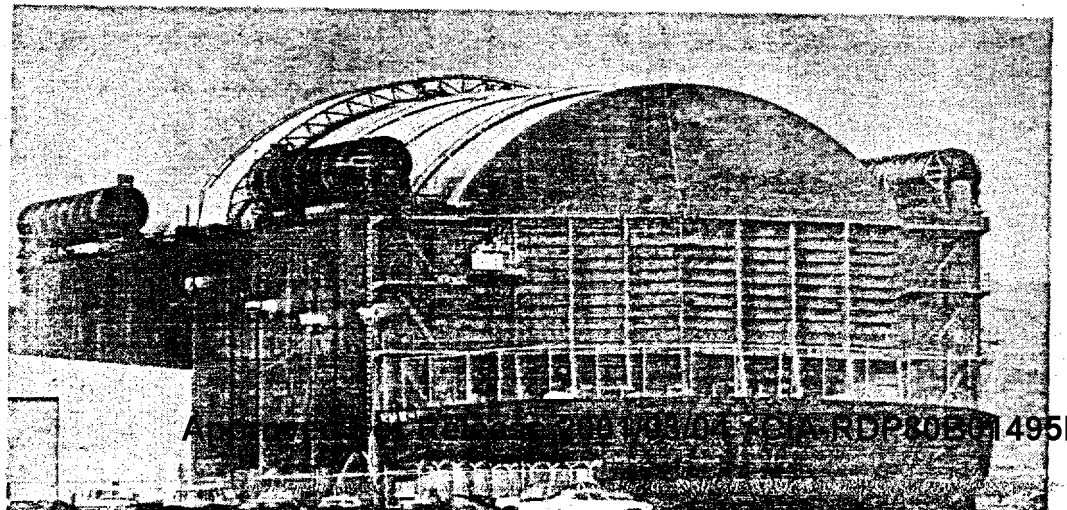
Geologically, the stakes of this game may conveniently be divided into two categories: petroleum and hard minerals. Petroleum is more familiar as a resource problem, one that is being fanned by a few Arab leaders who see our shortages as the key to forcing change in American-Mideast policy. According to a U.N. report, some 2272 billion barrels of offshore oil may offer the most immediate escape from this coercion.

More recently discovered is the wealth now locked in an assortment of "hard" minerals, particularly in potato-shaped manganese nodules lying loose on the bottom of most of the world's oceans. Estimates of quantity vary wildly, from 90 to 1600 billion tons in the north Pacific alone. So do ultimate recovery costs and market values, although the best guess seems to be that the nodules will sell for something like $115 a ton. As Larry Fabian of the Brookings Institution says, "There is really no hard economics in this business yet."

Even soft economics seems to be enough for the mining companies. Manganese nodules were discovered during the historic oceanographic expedition of H. M. S. *Challenger*, 1872–76, but their abundance was not appreciated until a decade ago. In 1965 a book appeared

Alan Anderson writes about science for Time *magazine.*

Assault barge—Howard Hughes is reported to be preparing this huge barge for submersion to the ocean floor, where it will dig for copper, nickel, and manganese. UPI



called *Mineral Resources of the Sea* by John Mero, which carried astounding resource estimates that inspired a number of companies to gear up for what seemed to be the coming sea-floor bonanza. Mero has since become quite wealthy as a consultant, and his early estimates have been toned down a bit; but *nodule* is still a magic word for marine technologists. These golf-ball-sized blackish lumps may be found from Scottish lochs to Lake Michigan, but the mother lode seems to be a 12-million-square-kilometer triangle southeast of Hawaii, where they occur in densities of two pounds per square foot.

Manganese nodules are thought to form as precipitates around a "seed," such as a grain of rock, a bit of red clay, or even a shark's tooth or whale's ear bone. Although a single nodule may contain more than thirty different metals, miners are chiefly after the cobalt, nickel, copper, and manganese, in that order. In the case of the United States, this is easy to understand: We import 92 percent of our cobalt, 84 percent of our nickel, 98 percent of our manganese, and, even though we are the world's largest copper producer, 19 percent of our copper. The first three are in great demand by steelmakers —cobalt and nickel for forming superalloys when blended with iron and manganese for processing.

Deepsea Ventures, Inc.

Manganese nodules—"A magic word for marine technologists . . ."

DESPITE THE DIFFICULTY of raking the sea floor from three miles above, the job may still be easier than land mining, with its "railroads to nowhere" and other transport problems. The prospects have already whetted mining appetites not only in the United States but also in France, Germany, Japan, Canada, Australia, and the Soviet Union; two dozen other countries have shown interest. At this point there seem to be enough nodules for all. The prime resource area in the Pacific is thought to be rich enough to support 100 simultaneous mining operations for 200 years—even though a single mine, to be economical, would have to comprise some 4000 square miles, versus 100 on land.

The American effort to mine the sea floor is being led by a handful of private companies, particularly the Kennecott Copper Corporation, Tenneco's Deepsea Ventures, Inc., and Howard Hughes's Summa Corporation. Together they have invested about $100 million. Deepsea has processed more than 100 tons of nodules in a pilot plant in Virginia and says that it could handle a million tons a year by 1975 or 1976. The 618-foot vessel launched by Hughes in August is said to be capable, in tandem with a 324-foot submersible barge, of retrieving some five tons of nodules a day from the plains of the deep sea. The companies are eager, like technological white knights, to save the country from its mineral woes. "We are ready," says N. W. Freeman of Deepsea Ventures, "to go commercial."

There is one snag, however: The U.S. government is unable, and unwilling, to assure the mining companies that their multimillion-dollar investments will be safe. The American Mining Congress is fighting hard for a bill introduced in both houses of Congress that would give them this assurance—and more. Under the bill any "qualified" company could secure a claim to blocks of ocean floor 40,000 kilometers square—an area larger than Vermont and New Hampshire combined—plus a commitment by Uncle Sam to underwrite any losses during the next forty years, all for only $5000. The bill, introduced in the Senate by Sen. Lee Metcalf of Montana and in the House by Rep. Thomas Downing of Virginia, so blatantly favors the mining lobby that even Metcalf admits it is really intended not so much for passage as to spur the government into some kind of action.

If such a giant land grab did get under way, there would be global confusion, almost certainly accompanied by violence. Metcalf concedes publicly that those nations without marine technology would be left high and dry. A natural reaction on their part would be to start a land grab of their own—most likely a claim of a territorial jurisdiction of 200 miles for fishing and navigation as well as mineral rights. It is easy to visualize an escalation of competing claims, infringement disputes, and the use of armed gunboats. Furthermore, a number of developing nations whose economies depend on metal exports would suffer if world markets were suddenly swelled by huge new sources. A mere handful of nodule mining operations, for example, could equal the current world production of cobalt. A mineral-rich country such as Zaïre would certainly suffer.

Legally, the bill is on soft ground or no ground at all. Unfortunately, the 1958 Geneva Convention on the Territorial Sea did not really deal with the sea beyond depths of 200 meters; there was then no idea that this region would ever be useful or disputed. The first relevant precedent was the 1970 U.N. resolution, passed 108 to 0 in the General Assembly, with fourteen Soviet-bloc abstentions, that the deep seabed could not be appropriated by any nation. Last March ex-Secretary of State Dean Rusk said that the mining proposal was "sheer insanity," and Lyndon Johnson, when he was President, wrote: "Under no circumstances, we believe, must we ever allow the prospects of a rich harvest in mineral wealth from the seabed to create a new form of colonial competition among the maritime nations." At present, the administration is silent on the bill—a tactic viewed less as tacit approval than as cagey willingness to use it as a bargaining weapon in Santiago.

The miners are fit to be tied at the delay. The American Mining Congress, a lobbying group, complains that the President promised three years ago some form of interim legislation that would allow U.S. companies to maintain their

to propagate lead over other countries. C. H. Burgess, vice president for exploration at Kennecott, warned a Senate committee last year that firms needed "certain assurances of a legal regime" before risking "large sums—$150–300 million—for a commercial plant." An exchange at the same hearing between Senator Metcalf and T. S. Ary of the Mining Congress revealed the sense of camaraderie and unreality that pervaded the discussion:

ARY: If the United Nations Seabed Committee continues at its present slow rate, it is unlikely that a treaty will be ratified in this decade, if ever, and certainly long after the immediate necessity for a legal regime has passed.

METCALF: If you will pardon me, I would say you should change that word *decade* to *centuries*.

ARY: Our committee discussed that, and we thought we should put *decade* in there rather than *until eternity*.

METCALF: Well, you are more optimistic than I am.

Alaskan Sen. Ted Stevens, a cosponsor of the bill, further cited the OPEC and Chilean expropriations in recent years to illustrate what he called changing times. "We are living in a different world today, one in which the less developed nations are taking concerted action to strengthen their economic position and weaken ours."

While the nodules are the splashiest ocean-mineral issue, law of the sea debaters are quarreling over scores of others. Among hard minerals the biggest money-maker by far is ordinary gravel; over 100 million dollars' worth is scooped up each year for construction projects. Whole industries depend on the dredging of tin ($41 million a year), limestone ($36 million), sulphur ($26 million), diamonds ($4 million), iron sands ($4 million), and barium ore ($1 million). The United States alone collects 20 million tons of oyster shells each year to make cement and fertilizer. Rutile and ilmenite yield costly titanium, widely used in aerospace manufacturing.

In addition to dredging, more than 300 operations off sixty countries are earning over $400 million a year extracting minerals directly from sea water, especially salt, bromine compounds, and magnesium, and, to a smaller extent, potassium, calcium, and deuterium—a heavy form of hydrogen that someday will provide a virtually inexhaustible source of energy as the fuel for hydrogen-fusion reactors. More than 200 plants extract a mineral that is becoming increasingly scarce: fresh water. Finally, enterprising Russians are pursuing the age-old dream of gleaning gold from salt water. Scientists at the Irkutsk Institute of Rare Metals report successful culturing of a fungus that extracts 98 percent of the gold from some sea-water samples. Other scientists are skeptical of this biological sleight of hand. Nor has anyone found the key to better extraction through chemistry. One calculation indicates that by chemical means it would cost $50,000 to isolate the 200,000 dollars' worth of gold found in a cubic mile of sea water.

> "It may indeed be many years before nations can agree whether to compete for the riches of the sea in traditional, warlike fashion or to divide them peacefully."

THE MOST EXCITING NEWS for mineral seekers these days, however, has come straight out of basic geological research during the last decade. Geologists have demonstrated the astounding fact that the earth's crust is not as rigid as suspected but highly mobile, composed of a series of sliding "plates," which are created along oceanic ridges and consumed in oceanic trenches. Most important, the time lag between this discovery and its practical application has been breathtakingly short. Even as oceanographers were dredging up the muddy evidence for the theory of sea-floor spreading, they were hauling aboard the key to new mineral riches. Deep-sea drillers aboard the *Glomar Challenger* and other research ships have discovered that minerals tend to concentrate along the lines where earth crust is created (divergent boundaries) and consumed (convergent boundaries). The most important find so far are some hot brines at the bottom of the Red Sea, rich in iron, manganese, zinc, silver, copper, and gold. The Red Sea is a "baby ocean," slowly widening as molten rock from the earth's mantle rises to create new sea floor along the central seam. Three large pools along this seam are thought to contain more than 50 million tons of metal, worth some $2.5 billion. Economic metal lodes may also be found along older divergent plate boundaries, such as the Mid-Atlantic ridge.

The implications of sea-floor spreading and continental drift have not been lost on oilmen. It has become apparent that petroleum, like hard minerals, can be expected to occur along both divergent and convergent boundaries. In a baby ocean, for example, organic material from land is washed into the water. As water evaporates, layers of salt precipitate. The ocean broadens (the Atlantic was a baby ocean 100 to 200 million years ago), and sediment slowly covers the organic matter, which, by processes still not well understood, turns into petroleum. Drilling tests have already revealed encouraging layers of salt and organic mud in the Red Sea, for example, and on both sides of the Atlantic; petroleum has been found along the West African coast, and oil reserves off the eastern United States are now thought to far exceed those under Alaska's North Slope. Convergent boundaries, where plates grind together, are thought to be equally rich, including such regions as the South China Sea, the Sea of Okhotsk, the Bering Sea, the Philippines, and Japan.

Knowing all this, oil companies now estimate that offshore petroleum reserves are far greater than reserves on land. In 1956 only 1 percent of all our oil came from offshore wells; now it's up to 18 percent and is expected to reach 30 percent by 1995. The demand for offshore drilling rigs is now so great that many countries are unable to buy them. About 135 countries have prospects of discovering offshore petroleum; half of these are exploring, and half of *these* are already drilling.

The main problem offshore is that production costs increase more rapidly than depth. Expenses jump four times, for example, as depth drops from 33 to 330 meters; at greater depths it may be possible to tap only giant oil fields. Fortunately, of the 2272 billion barrels of petroleum estimated by the United Nations to exist offshore, some 1344 b.b.—over half—are buried in the continental shelves. These shelves are basically shallow-water extensions of the continents themselves, averaging forty-five miles in width and dipping to about 200 meters in depth. Therefore, much of this huge area is within commercial range already; one well is now pumping from a depth of 114 meters.

Such an ongoing black-gold rush makes it especially urgent that nations define seabed ownership rights. By the mid-Seventies oil drilling will pass fishing as the number-one oceanic revenue

earner. Governments as well as private companies want the spoils: A single lease in the Santa Barbara Channel brought the Department of the Interior $600 million in revenue several years ago. Tremendous pressure to exploit oceanic oil is building up as Middle Eastern leaders claim more control of their oil fields and Alaskan wells remain capped. Because so many of the potential petroleum pools lie in areas of dispute, extraction without an international treaty would result in arguments over pollution as well as wealth. Unless some agreement is reached, the world is certain to see armed clashes as the energy crisis worsens. Venezuela and Colombia, for example, have more than once come close to blows over offshore oil near their common border.

Idealists see the hard-and-soft mineral quarrel as the ultimate opportunity for the application of international law. Others foresee a new age of neocolonial lawlessness of the type that led to the cynical division of Africa in the nineteenth century. The only workable course at present seems to be some sort of worldwide controlling regime. The United States Oceans Policy, announced by President Nixon in 1970, advocates creation of an International Seabed Area—covering everything deeper than 200 meters—controlled by an International Seabed Resources Authority with real power to license mining operations, arbitrate grievances, and levy fines of up to $1000 a day for pollution or other violations.

Perhaps the most radical feature of this plan is a complex formula to distribute profits among all nations, based on population and per capita income. For example, of a hypothetical revenue of $500 million that might be gathered by the end of this decade, Somalia ($61 per capita income) would get $384,500; Ceylon ($159 income) would get $1,717,000; and Brazil ($381 income) would get $12,567,500.

Between us and an agreeable ocean regime lies legal chaos. As John Dombroski writes in the *Cornell Law Review*, "The law of the seabed largely constitutes an area of no law." Precedents are vague or non-existent; each country has its own warring factions seeking different goals. Given the uncertain state of things, the chummy cynicism of Mr. Ary and Senator Metcalf may not be unrealistic after all. It may indeed be many years before nations can agree whether to compete for the riches of the sea in traditional, warlike fashion or to divide them peacefully.

SATURDAY REVIEW (World), 6 November 1973, pp. 14-15

CHAOS AT SEA

Ardent internationalists are saying that without new rules governing use of the seas, armed conflict is inevitable.

SATURDAY REVIEW/WORLD *begins in this issue a series of articles focusing on three problem areas that so far defy international solution: the mining of the seabed, ocean pollution, and the thorny issue of world fishing rights. Below, science writer Alan Anderson introduces the general subject, interviews Malta's Arvid Pardo, and explores "the rape of the seabed."*

Man traditionally has regarded the sea as vast, mysterious, and wet. No one questions its wetness, but the size and mystery of it all seem to be evaporating. Aquanauts have discovered that they can live like fishes on the sea floor for months at a time, and deep-diving submersibles routinely explore the abyssal plains. As man overcrowds and overexploits dry land, nations already are beginning to bruise elbows in their rush to corner marine food supplies, natural resources, and sheer space. Governments are quarreling over fishing grounds, rights of passage, mineral resources, pollution control, and scientific exploration.

The world finds itself threatened by this tangle of problems with sobering suddenness. As recently as 1958 the Geneva Convention on the Territorial Sea failed to recognize how rapidly man would expand his domain offshore. The alert was not really sounded until 1967, when a genial but determined diplomat from Malta named Arvid Pardo proclaimed that "the known resources of the seabed are far greater than the resources known to exist on land." In a 3½-hour speech to the General Assembly, Pardo, who was Malta's ambassador to the United Nations from 1964 until 1971, argued persuasively that ocean technology was outstripping ocean politics at a dangerous rate. His words were greeted at first by skepticism bordering on suspicion (why was he bringing this up now?), but he was dead serious. Within a few months Pardo was being called "father of the seabed" and had succeeded in introducing the idea that a new age was dawning. More specifically, he warned that man would quickly have to formulate new rules for uses of the ocean if he was to avoid widespread warfare.

The direct result of Pardo's speech was the creation of an *ad hoc* U.N. committee, which in 1969 became a permanent committee to study peaceful uses of the sea. Most important, the United Nations was persuaded to hold a Law of the Sea Conference in 1973 aimed at writing an international treaty. Last summer ninety-two nations spent two months in Geneva, thrashing through a maelstrom of proposals, counterproposals, and just plain objections; the committee, expected to swell to 150 members, hopes to hold its substantive session in Santiago next year.

Aside from the fact that this is the biggest committee in U.N. history, the points of view represented seem almost impossibly diverse. Among the 130 countries generally considered to make up the world community, 29 are completely landlocked, 51 have small coastlines, 25 have small-to-moderate coasts, and most of the 25 that have extensive coastlines are already affluent. Those with long sea frontage naturally would like to extend dominion seaward, while landlocked countries would prefer a strong international agency to assure even distribution of sea wealth.

Legally, the sea is a quagmire. Do the oceans and their wealth belong to everyone (*res communis*) or to no one (*res nullius*)? Most people say neither, but the proportions remain to be worked out. Modern nations can no longer be as high-handed as were Spain and Portugal in 1494 when they divided the world's oceans equally along a north-south line [illegible] Islands. The concept of *res communis* first appeared in 1608, when Dutch jurist Hugo Grotius argued that the sea, like the air, is not subject to appropriation. However, by 1700, men were making a distinction between "high seas" and "territorial seas," and in the nineteenth century the latter limit was defined by the three-mile range of a cannon, the extent of land-based control by weapons.

Modern legal confusion dates from the 1945 Truman Proclamation. This vague doctrine asserted territorial rights to the limit of the continental shelf. Unfortunately, the shelf was not only ill-defined but also geologically capricious: For example, while Peru has practically no shelf, Siberia presides over 800 miles of shallow—and potentially mineral rich—undersea terrain. Thus by 1952 Peru, Chile, and Ecuador, all practically shelfless, had announced total sovereignty over a belt within 200 miles of shore. Such claims are obviously impractical in the cases of island groups and seas such as the Mediterranean and Caribbean. Hence some sort of compromise must be reached, perhaps involving a 12-mile "territorial sea" and a 200-mile "patrimonial sea." The former would be a zone of near-complete control; for example, foreign submarines would be granted free passage only while they are surfaced. The latter zone would involve primarily fishing and mineral rights.

Within this issue is the ticklish question of rights of passage through the world's 116 major navigable straits. Naval powers like the United States, Russia, and Japan will sacrifice almost anything to obtain guaranteed passage for tankers, freighters, and warships. If controlling nations closed only three key straits in Southeast Asia, for example (Makassar, Malacca, and Torres), raw materials for Japan would have to pass all the way around Tasmania—a displacement that would force dramatic changes in the value of the yen and ultimately in the entire world monetary balance.

The other question that must be resolved is the nature of the controlling regime. Most of the developing and landlocked nations want a strong international agency that will prevent industrial states from taking control. Developed nations want a freer hand, with individual states holding licenses to mineral and hydrocarbon rights. The answer could be a "cosmo-corporation" along the lines of Intelsat, the international consortium of

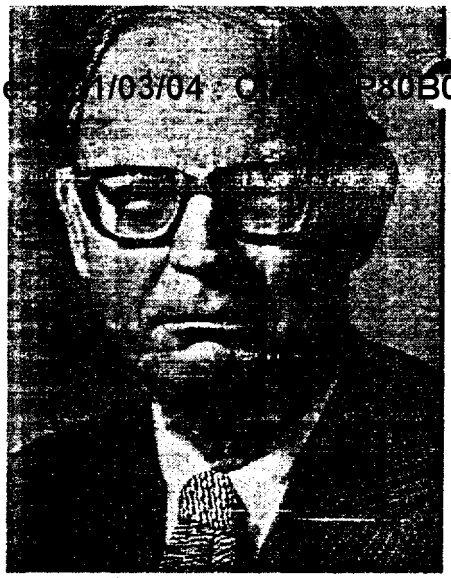
eighty-two nations that regulates commercial satellite use.

Many observers are pessimistic about the ability of the Law of the Sea Conference to reach agreement on such basic issues, especially since some less-developed but mineral-rich countries would rather negotiate bilaterally. "If I were an LDC and didn't have access yet to my own mineral resources, what would I do at a conference like that?" asks one economist. "I'd stonewall it." Nonetheless, U.N. officers hope that once the two big questions of territorial sovereignty and the international regime can be worked out, the smaller details will quickly fall into place. Dr. Pardo, who worked in the United Nations since its formation in 1945 and is now at the Woodrow Wilson International Center for Scholars in Washington, agreed to summarize his feelings about the conference—and the issues—for SATURDAY REVIEW/WORLD:

"I think most people are finally realizing that we are involved in a revolution in our uses of ocean space. In the face of this revolution, traditional law of the sea has almost totally collapsed. That is why in 1967 I began to push the idea that the seabed be considered the common heritage of mankind and that an international organization be set up to administer the uses of the sea. The resources should be developed to benefit all men, and the financial benefits used primarily for the developing countries.

"Let me say that I was thought a total madman when I made the speech. They said I was indulging in science fiction, that estimates of mineral wealth on the sea floor were immense exaggerations, and that nothing would happen for decades that would require the attention of the United Nations. Well, the ocean policy that the United States presented in 1970 turned out to be a fairly close elaboration of what I had said in 1967.

"Even this concept is no longer viable. One can't consider the seabed separately from the rest of ocean space. We are running out of room on land. I see a trend of transferring human activity into the oceans—both to avoid congestion along the coasts and to relieve pollution. Cities are being planned off Hawaii and in the North Sea. The Dutch, the Belgians, the Japanese are already moving toward offshore facilities. The Dutch want an artificial island to recycle wastes. They also say, instead of re-doing the port of Rotterdam for supertankers, why not have a deep-water port offshore? Once you have a port or a refinery, why not small industry? Why not nuclear power plants? Why not housing for the people who work at these facilities? The whole thing grows like Topsy once it starts. The military will want submarine bases in undersea mountainsides. We will be tempted to change the weather, divert ocean currents. Russia and Canada both intend to divert huge rivers that now flow northward: What will this do to the climate? These schemes are frighteningly dangerous but perfectly legal now.



Pardo—"Genial but determined . . ."

"The present law is based upon two concepts: sovereignty and freedom. There is national sovereignty in territorial waters, freedom beyond. We also have various zones for fisheries, security, mining. There is no consensus on limits; so every state has been doing what it wishes. There must be an agreement that we can't have total sovereignty, for that would mean total chaos. Nor can we have total freedom, for the same reason.

"What I would like is a new international agency to sort out these questions. It should not be part of the United Nations, for it would then sink into the swamp of what the United Nations has become. Nor should it be a rival to the United Nations. It must be a parallel agency, founded on different foundations. We are no longer in 1945. We are getting on to 1975, and the world has changed. We cannot have an international system based upon the system of one nation, one vote. The way things stand, you can get a voting majority at the U.N. from states that represent ten percent of the world's population; you can get a two-thirds majority with states representing less than fourteen percent of the population. This is ridiculous.

"The agency would have three categories of member states, all of which must have a population over one hundred thousand. First, states that have more than one hundred million population or meet six of nine criteria, such as length of coastline, catch of fish, and volume of merchant shipping. Second, all other coastal states. Third, landlocked countries. A decision by the agency would require a majority in two of the three categories. Everybody would have one vote, but they would have to express it in the category in which they belong.

"The regime should be concerned with all problems associated with the sea. It should establish international standards for the use of the sea, whether within or outside national jurisdiction. The outside area should be administered for the benefit of the international community as a whole, taking into particular account the needs of poor countries. The system should take on such tasks as pollution monitoring, fisheries management, and the settlement of disputes. Someday we will need another agency like it to deal with outer space.

"Whatever kind of regime the United Nations adopts, the details will have to be worked out in Santiago. By the standards of the United Nations, we made fantastic progress over the summer in Geneva compared with last year. There's been a fantastic amount of movement, of putting out draft treaties. What has not started yet is serious negotiating, which is understandable. You don't get governments to focus on this question on a high political level until they have to.

"Once the conference starts, we shall really have to move. Next year we shall complete, at best, consideration of the alternative draft treaties. The crunch will come in the second half of '75 or the beginning of '76. If there is no agreement by '76, the conference will fail. Why? Because technology will not wait. By then, manganese nodules, for example, will have become big business.

"If the conference fails, there will be not only the obvious short-term chaos, such as nodule filching and the Iceland fishing dispute, but also rather serious long-term implications for the world community. They will become apparent after ten or fifteen years, not more. Once states have a technology, especially a powerful technology, they will go ahead and use it and the devil take the hindmost. That is the way the world has always operated. If there is no regime for controlling that technology, the rich will get richer. The developing countries, the ones without the technology, will, as usual, be the ones to suffer." □

A Law of the Sea Conference: Who Needs It?

Robert L. Friedheim

Mr. Friedheim is a staff member of the Center for Naval Analyses and a consultant to the SAIS Ocean Policy Project. His article has been excerpted from the forthcoming "International Relations and the Future of Ocean Space," Studies in International Affairs No. 10, Institute of International Studies, The University of South Carolina.

THE WORLD community has put virtually all of its eggs in one basket. With the exception of some associated problems such as pollution, solutions to which will be negotiated in other fora, the world community is relying solely upon a single, indefinite, universal law-making conference to resolve the multiple problems of the increased uses of the sea. Should the conference not take place or should it fail, we may experience the anarchy on the sea that the headline writers are so fond of evoking.[1]

WE ARE AT the United Nations for the third time on law of the sea matters. If we are to give ourselves the maximum chance for concluding a UN Law of the Sea Conference successfully, we must understand the political nature of the UN system. We must not forget that the UN General Assembly is a political forum in which states and groups of states attempt to foster and protect what they see as their interests. We may be attempting to create law at the UN Law of the Sea Conference, but the problems that arise are more a result of clashing national wills on policy than of contrasting legal philosophies. We must recognize that at the heart of the debate on the law of the sea is the question of allocation—allocation of the ocean's areas and permissible uses between contending parties that consider notions of "jurisdiction," "control," or "freedom" not as theoretical abstractions, but as concepts that enhance their short-run interests or provide them some tactical maneuver room.

A second factor in assessing the UN

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as a negotiating forum is a recognition of how its General Assembly, or General Assembly-sponsored conference, is skewed in favor of the developing. There is now a permanent majority of states from the Third World in the General Assembly. In theory, if the developing can maintain sufficient discipline to marshal their votes, they could ram through the Assembly any resolution they pleased, however prejudicial to the minority of developing states. In other words, they are in a position to be rampantly majoritarian.

At least three further observations can be drawn from this fact. First, the issues that will be seriously negotiated at the United Nations are those that are salient to the majority. Second, we will always be under the threat of the exercise of majoritarianism. Third, we cannot expect a majority to be interested in developing rules for the ocean divorced from extra-oceanic considerations.

If it is necessary to have issues on any UN agenda salient to the developing majority, it is necessary that we consider the question of whether the law of the sea *per se* is salient to the majority. The answer is that the law of the sea as we know it is only indirectly relevant to the developing states. It is the ocean users—the developed—who claim an imperative need for known rules of transiting on, over, and under the ocean, who need laws to state with precision what the rules of the game are in ocean exploitation, who are concerned with ocean science both as a source of useful information and as a source of scientific truth, and who, because they are both the major offenders and major potential victims, wish to bring man's degradation of his environment under control.

While some developing states have substantial ocean interests (the West Coast Latin Americans in fishing, some African and Middle Eastern states in offshore oil), most are primarily concerned with the problems arising out of their own underdevelopment. Thus there are two foci to the ocean concerns of the developing states. The first is the hope that they might harness the resources of the oceans to overcome their grave disadvantages. The second is the knowledge that they can prevent the developed from using the oceans to widen the gap between developed and developing.

The idea of extracting revenue is still alive, and the hope of many developing states to create ocean exploration and exploitation capabilities is becoming one of the major themes of the debate. Such aspirations ought to be viewed sympathetically by the developed, not only because it is the "right" thing to do but because unless the developing find some salient issues in the debate over the uses of the sea, they will anticipate no profit from the conference decisions. Thus, they will have no incentive to be cooperative.

Unfortunately another focus of some of the developing states cannot be

viewed so benevolently by the developed: that is, the possibility of blocking or slowing down the access of the developed to ocean uses and resources. It is understandable that such a course would be tempting to the developing; but such action would reduce ocean problems to a mere surrogate for the main issues of the developed-developing conflict. This is not to say that there is no reality to developing fears that, left unchecked, the developed will use access to ocean areas and resources to benefit only themselves, and will thereby widen the discrepancies between the two sets of states. But to handle the problem in this manner is clearly to play a zero-sum game. Obviously only in a voting sense can the developing win. As a consequence all would lose. We have completed the circle and have thereby returned to the problem of majoritarianism.

The temptation must be strong for the current developing majority to try to break the many deadlocked issues in UN negotiations simply by insisting upon their own way. But thus far, the developing have not, as often predicted, "abused" their position. But we must understand that the threat will be constantly present when the issues under negotiation are important to both groups.

Another characteristic of UN politics relates to the type of issues which, if consensus is not achieved, are likely to be forced to a vote. Many of the most contentious issues which could be brought to a vote in the Law of the Sea Conference are highly "visible" issues with a large symbolic content. Especially touchy are those issues which deal with aspects of territoriality. For example, if "freedom of ocean science," which in the minds of most developed-state audiences has a positive connotation, correlates very highly with control of territory in the minds of representatives of many developing states, we ought to be warned that such a concept will have a difficult time gaining a requisite majority if brought to a vote.[2]

When issues are symbolic, there is a tendency for states to be rigid in their voting. And what is being debated at the Seabed Committee are exactly those concepts by which states define themselves. Despite statements by the developing that Western-derived international law is unjust, they find some aspects of that law highly relevant to their present status and future aspirations. Many of the developing are "new" states just setting their borders and creating "nations." Thus they find concepts of sovereignty and territoriality highly salient and will vote for the symbols which help to reinforce their seeming independence. And so they must, for no regime would survive long if it voted contrary to the national myth. On occasion, American diplomats (who have frequently used the same theme in past UN negotiations) are reminded that the United States is not the only

state which must respond to public opinion.

In summary, we are not going to get sensible solutions to ocean problems if we force symbolic issues to a vote. Such advice would be a prescription to disaster.

Negotiating ocean use problems at the United Nations also tends to universalize problems, many of which might better be handled at a bilateral or regional level. For many ocean use problems are area-specific, or, if biological, stock-specific. For example, environmental degradation is a general problem but turns out to be more severe where there is an enclosed or semi-enclosed sea rather than an open ocean. The measures needed to deal adequately with the problem will very likely differ from region to region. Unfortunately many of these regional or local needs are swept aside in the search for a formula that a great variety of states could support.

Many ocean use problems are area-specific in another sense—they are *political* regional problems. Much of the turmoil in the contemporary law of the sea is a result of the Latin American 200-mile claims. They have made no secret of the fact that their quarrel is with the United States. That is, it is a regional or hemispheric problem which—if the U.S. had paid serious attention in the 1950's and 1960's as some students of the controversy claim[3]—we might have settled years ago by recognizing that these were essentially resource and not territorial claims. It appears to many observers that the U.S. preferred to bring the problem to the UN in the hope of using the totality of states to force a retreat by an aberrant regional group. I do not think it has worked that way. Indeed, it has had rather the opposite effect of transforming a regional into a universal problem. It has forced the Latin Americans to lobby vigorously for their position among the developing in general. It has made them try to sell the 200-mile zone as the only possible salvation of the developing states vis-à-vis the rapacious developed. If they succeed in selling this position to the developing we will have a serious problem indeed. This will not be merely a voting problem; it will be a problem of conflict in the real world.

Observers of UN politics are aware that not all of the trade-offs and deals are made on the particular items on an agenda. But too often Western delegations to special UN-sponsored conferences have prepared for the issues on the agenda of that conference and little else. Indeed, they are usually authorized to bargain only on the items on the formal agenda. In other words they may consider trading an orange for an orange rather than an orange for an apple. This appears to have been the case in the instructions of the U.S. delegation to the UN Conference on the Human Environment.

If the same pattern prevails in the instructions of the U.S. delegation to the Law of the Sea Conference, it

would be a pity, because it does not reflect the necessities of the bargaining environment. The developing states are not primarily interested in developing a set of rules for ocean use *per se*. What they want is an apple for an orange—a concession by the U.S. on development assistance, more attention on the part of the U.S. to the plans of UNCTAD (the United Nations Conference on Trade, Aid, and Development), or lower developed tariffs on developing products. Until the developed understand that they must make concessions on subjects unrelated, or only peripherally related, to the law of the sea in return for developing concessions on the law of the sea, we can expect little progress.

I BELIEVE that, if viewed in perspective, lack of substantive progress at the last several law of the sea negotiating sessions may not necessarily point toward a disaster in the law of the sea. The stalemate gives all participants with important interests at stake time to back away from the extreme positions that they have so bravely announced on the floor of the Assembly or Committee. Many states—of greatly varying persuasions—doubtless would be grateful not to have to push their symbols to a vote.

The time we will gain by not trying to push a law of the sea conference to the voting stage in 1973 will also provide us time for a number of other important tasks.

First among them is the task of seeking solutions to ocean use problems by means other than a universal UN-sponsored law-making conference. I mean this in two ways depending upon the circumstances. The first is a *rival* medium for solving ocean use problems; the second is a *supplement* to the UN proceedings.

One reason for the impasse is that many of the participants did not understand the alternatives in case of a breakdown in the law of the sea negotiations. The explanation for this, I suspect, is that the developed never really considered an alternative to UN bargaining on a transnational, regional, or interested parties basis. Therefore they did not communicate to the developing that they thought they had an alternative in case of failure or intransigence.

The developing have not neglected such specialized conferences, with the Latin Americans meeting on law of the sea matters at Lima, Peru, and Montevideo, Uruguay; the Asian-African Legal Consultative Committee meeting at Colombo, Ceylon; and the heads of non-aligned countries meeting at Lusaka, Zambia. If the Law of the Sea Conference does not convene, or fails, many of the developing will try to enforce as law the positions they decided on at such meetings.

The developed should do no less, if only to demonstrate what would occur if there is no effort to reach compromise at Geneva. Moreover,

given the technical resources available to the developed (as a whole or as subsets of the whole), specialized conferences can take the lead in drawing up draft conventions which could then be presented either as documents the participating states alone would agree to or as the basis for further bargaining between the participating and non-participating states.

The second reason to look to regional, user, or specialized conference means of coping with new ocean use problems is that, even if the Law of the Sea Conference succeeds beyond our expectations, it cannot deal with all the relevant problems. It cannot, first, because of the sheer complexity of the issues, and second, because some problems are a result of local or regional physical or biological anomalies which should be dealt with on a less-than-universal level. Many inter-governmental organizations have interests in the oceans and have made important contributions to their better use.[4] They should be more frequently used, improved, and strengthened. Moreover, there is a warren of transnational non-governmental organizations interested in the oceans, whose services have been and can continue to be called upon to solve ocean problems. Too often we neglect that which is not dramatic or instantaneous.

We will also make wise use of the time provided by the stalemate if we spend some of it reexamining the fundamental issues of ocean use. As ocean uses increase, the old conceptual framework of freedom of the seas will become increasingly inadequate. It is no longer sufficient to assume that any ocean user can do as he pleases as long as he does not interfere with the rights of others, because we know how interrelated are the activities on the oceans and how comparatively fragile the ocean is. We can congest straits, we can pollute offshore waters, and we can overharvest fish stocks.

In short we must deal with the problems arising out of the common property nature of the ocean. At the same time we cannot merely assume that the answer is to extend national jurisdiction out to some mid-ocean median point where one state's "territory" will meet that of another state whose land territory begins on the other side of the ocean. If we merely reduce ocean territory to national property, we will have "balkanized" the oceans, probably destroyed the basis of world commerce (with each coastal state tempted to charge a toll for transit of its "territory"), and set the stage for naval clashes akin to those of the great age of sail described by Mahan in *The Influence of Seapower on History*.

In other words, some aspects of "freedom of the seas" are still relevant to the rational use of the oceans. Somehow we must balance off the restrictions necessitated by greater use with the freedoms that would allow us to use the oceans without excessive costs and administrative burdens. We

are still awaiting a new operational concept for characterizing the permissible ocean uses of the future.

Footnotes

[1] James P. Brown, "Anarchy at Sea," *New York Times*, April 10, 1972.

[2] Robert L. Friedheim and Joseph B. Kadane, "Ocean Science in the UN Political Arena," *Journal of Maritime Law and Commerce* 3:3 (April 1972), pp. 473-502.

[3] David C. Loring, "The United States-Peruvian 'Fisheries' Dispute," *Stanford Law Review* 23:3 (February 1971), pp. 391-453; Barry B. L. Auguste, *The Continental Shelf: The Practice and Policy of the Latin American States, with Special Reference to Chile, Ecuador and Peru* (Geneva: DROZ, 1960).

[4] Robert L. Friedheim, "International Organizations and the Uses of the Oceans," in *Multinational Cooperation: Economic, Social and Scientific Development*, edited by R. J. Jordan (New York: Oxford University Press, 1972), pp. 223-281.

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